

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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In re: BRIDGESTONE/FIRESTONE, INC.,)	Master File No. IP 00-9374-C-B/S
TIRES PRODUCTS LIABILITY)	MDL No. 1373
LITIGATION)	(centralized before Hon. Sarah Evans
)	Barker, Judge)
)	
THIS DOCUMENT RELATES TO ALL)	
ACTIONS)	

**ORDER AMENDING PLAINTIFFS' MANAGEMENT STRUCTURE AND
ESTABLISHING FEE AND COST ASSESSMENTS**

**I. Order on Plaintiffs' Management Structure for the Personal Injury/Wrongful Death
Cases**

a. The Court hereby grants the request of Mr. Victor Diaz to be relieved of his duties as Lead Counsel for the personal injury/wrongful death cases. Mr. Diaz will remain on the MDL Law Committee, continuing to concentrate his efforts on the Venezuelan law issues. Co-Lead Counsel Mike Eidson will henceforth serve as Lead Counsel for the personal injury/wrongful death cases.

b. The personal injury/wrongful death side of the Plaintiffs' Executive Committee

(“PEC”)¹ shall henceforth consist of Lead Counsel Mike Eidson, Liaison Counsel William E. Winingham, Jr., and Mark P. Robinson, Jr. and Robert Langdon. Carlos Prietto, of Robinson, Calcagnie & Robinson is hereby appointed Co-Chair of the Budget/Records/Compensation Committee, replacing Ralph G. Patino.

c. All other terms of the Court’s Order on Organizational Structure and Discovery dated November 22, 2000, Order on Plaintiffs’ Management Structure and Various Case Management Matters dated December 8, 2000, and Case Management Order dated January 30, 2001, remain unchanged and in full force and effect unless specifically amended.

II. Order on Discovery Management

On or before August 28, 2003, the PEC shall submit to the Court a proposed plan for the future management and distribution of core discovery materials for cases within and outside the MDL.

III. Immediate Assessment for Costs

a. By its Order dated February 2, 2001, this court made an initial assessment applicable to all personal injury/wrongful death cases for costs incurred at the direction of the PEC in the prosecution of plaintiffs’ cases. The Court now makes a second assessment of One Thousand Dollars (\$1,000.00) per plaintiff’s decedent or plaintiff claiming bodily

¹All subsequent references in this order to the PEC are specifically to the personal injury/wrongful death membership of that committee.

injury (“Immediate Cost Assessment”).

b. The Immediate Cost Assessment applies to the following cases:

(1) All personal injury/wrongful death cases in this MDL in which the Court has received a stipulation of dismissal or other notice of settlement before the date of this Order but which have not yet been dismissed by the Court;² and

(2) All other personal injury/wrongful death cases currently pending in this MDL or subsequently transferred to or filed in this court and administered as part of this MDL.

c. The above payments shall be made payable to the “PI/WD Special Expense Account” and shall be forwarded to Carlos Prietto, Co-Chair of the Budget/Records/Compensation Committee at Robinson, Calcagnie & Robinson, 620 Newport Center Drive, 7th Floor, Newport Beach, California 92660 (ph. 949-720-1288). Payments for the above-identified cases shall be made within twenty (20) days of this order (or, as to cases not yet pending in this MDL, within twenty (20) days of the filing, removal, or transfer³ to this court).

d. Following the date of this order:

(1) All stipulations of dismissal filed with the Court must contain counsels’

²This assessment therefore applies to cases settled but not yet dismissed by the Court as a result of plaintiffs’/counsels’ non-compliance with the Court’s February 2, 2001 Order, except for those cases in which a waiver of that assessment was sought before the date of this Order.

³In the case of transfers by the Judicial Panel on Multidistrict Litigation, this date is typically recorded on the individual case docket as the date this court received the certified transfer order from the Panel.

confirmation that all cost assessments have been paid;

(2) Defendant(s), before payment of settlement or judgment proceeds, must confirm with the offices of Mr. Prietto that all required cost assessments have been paid on behalf of the plaintiff(s); and

(3) If such payment is not confirmed, defendant(s) shall hold out of the proceeds and pay to the PEC the amount owed, as advised by Mr. Prietto.

No dismissals or requests for suggestion for remand will be approved absent compliance with these requirements.

IV. Hold-Back for Future Fee/Cost Awards

a. Attorneys providing services in the MDL for the common benefit of the personal injury/wrongful death cases after the date of this order and with the authorization of the PEC will, upon proper motion, be awarded reasonable compensation for such services. Counsel shall also, in connection with such motion, be entitled to reimbursement of costs reasonably incurred for the common benefit of the personal injury/wrongful death cases, whether incurred preceding or subsequent to the date of this order. Counsel who may seek an award of fees and/or costs from the Court are directed to comply with the reporting requirements of Paragraph XI, Attorneys Time and Expense Records of the Court's Case Management Order.

b. Mr. Eidson and Mr. Prietto are directed to establish an interest-bearing account

(separate from the PI/WD Special Expense Account) to receive and disburse the funds as provided in this order (“MDL No. 1373 Fee/Cost Hold-Back Account”) . These funds will be held subject to the direction of the Court. No party or attorney has any individual rights to these funds, except as provided by order of the Court. These funds will not constitute the separate property of any party or attorney except to the extent disbursed and shall not be subject to garnishment or attachment for the debts of any party or attorney.

c. Upon settlement or payment of judgment in a personal injury/wrongful death case subject to this section IV of the Court’s order (as set forth in section (e) below), defendant(s) shall retain 10% (Hold-Back Amount”) of the Gross Monetary Recovery (as set forth in section (f) below) and deposit such funds in the MDL No. 1373 Fee/Cost Hold-Back Account. At the conclusion of active coordinated pre-trial procedures in this MDL, or at such other time as the Court deems appropriate, the Court will award such fees and costs from that account as it finds fair and reasonable to counsel, as provided in section (a) above.

d. In ordering this retention of funds, the Court is not making the determination that any attorney(s) shall receive any specific sum or percentage for payment of fees or reimbursement of costs. Rather, this order is intended merely to create a fund from which, upon the Court’s determination following application of the appropriate legal and equitable standards, such an award can be made. If and at such time as the MDL No. 1373 Fee/Cost Hold-Back Account contains balances not necessary to be retained for the payment of fees

and/or costs, the Court will, subject to applicable law, make refunds on an equitable basis, or, if such balances are small, enter appropriate orders concerning the disposition of such funds.

e. The obligation set forth in this section IV:

(1) Applies to all personal injury/wrongful death cases now pending, or later filed in, transferred to, or removed to this court and treated as part of MDL No. 1373, including cases later remanded to state court, unless the case was remanded to a state court on the basis that the original removal was improper *and* the plaintiff makes no use of core discovery or MDL plaintiffs' core expert materials);

(2) Applies regardless of whether the case is disposed of during the time it is on the docket of this court, or following remand or transfer to another federal district court for trial or other proceedings;

(3) Shall follow the case to its final disposition in any United States court, including a court having bankruptcy jurisdiction; and

(4) Does *not* apply to any case in which a binding, enforceable settlement agreement had been entered before the date of this order.

f. The Gross Monetary Recovery:

(1) Includes all funds received in consideration of settlement or compromise or as recovery by way of judgment, including both compensatory and punitive damages, but does not include (a) court costs taxed to the defendant(s) or (b) any payments to be made by the defendant(s) directly to unrelated third parties, such as physicians, hospitals, and other

health-care providers; and

(2) In the case of structured settlements, is to be computed on the basis of the present value of any fixed and certain payments to be made in the future.

g. If the plaintiff's attorney has a contingent fee agreement with the client, the Hold-Back Amount shall be charged against, and paid from, the attorney's share of the recovery. Notwithstanding the foregoing, if the agreement has a separate provision regarding the reimbursement or responsibility for costs, the portion of the Hold-Back Amount estimated by the Court to be devoted to litigation costs (as distinguished from fees) may be treated in like manner as other costs under the agreement. The Court sets that estimate for all cases subject to this obligation at forty per cent (40%) of the Hold-Back Amount, subject to modification by future order or in a particular case.

h. To enable monitoring of compliance with this order, plaintiffs and defendants, and their counsel, are jointly responsible for promptly reporting to Mr. Prietto the terms of any settlement or judgment that may be subject to this order and all deposits made pursuant to this order. If so provided by the settlement agreement, the terms shall be kept confidential and not be communicated to other litigants or their counsel.

V. Additional Matters Applicable to Sections III and IV of this Order

a. Attorney fees reimbursable under section IV of this order, refer to the reasonable fees of attorneys and other legal professionals (*e.g.*, paralegals) for services provided (a) in connection with the prosecution of, and for the common benefit of, plaintiffs in the personal

injury/wrongful death cases and (b) with the authorization of the PEC. The MDL No. 1373 Fee/Cost Hold-Back Account will not be used to pay for services primarily related to a particular case (such as, by way of example, the deposition of a treating physician), even if such activity results in some incidental benefit to other plaintiffs.

b. Reimbursable costs, for purposes of sections III and IV of this order, refer to the reasonable expenses incurred in (a) in connection with the prosecution of, and for the common benefit of, plaintiffs in the personal injury/wrongful death cases and (b) with the authorization of the PEC. The accounts established under sections III and IV will not be used to reimburse expenses primarily related to a particular case, even if such expenditure results in some incidental benefit to other plaintiffs. Costs, by way of example, include “core” expert fees, expenses incurred in connection with “core” depositions, the fees of the Special Master, and expenses incurred by Lead Counsel and Liaison Counsel in carrying out the responsibilities of their positions.

c. The Court advises counsel of its expectation that any disputes regarding a party’s or attorney’s obligations under sections III or IV of this order will be resolved by counsel and the PEC working together and exhausting all potentials for resolution before seeking the intervention of the Court.

It is so ORDERED this _____ day of July, 2003.

SARAH EVANS BARKER, JUDGE

United States District Court
Southern District of Indiana

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